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Supreme Court of the United States

OCTOBER TERM, 1964.

No. 355.

BERNARD SUSSER, *et al.*,

Petitioners,

against

CARVEL CORPORATION, *et al.*,

Respondents.

MOTION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE* AND BRIEF OF INTERNATIONAL FRANCHISE ASSOCIATION, INC., AS *AMICUS CURIAE*.

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February 17, 1965.

INDEX.

	PAGE
MOTION FOR LEAVE TO FILE	1
BRIEF	
Interest of International Franchising Association, Inc.	3
Argument	5
I. Franchising Is in the Public Interest	5
II. Experience Does Not Warrant the Extension of *Per Se* Antitrust Rules to Franchising	8
III. The Consequences of Any Such Extension Could Be Ruinous	12
Conclusion	13
Citations	
Cases	
Northern Pacific Railway Co. v. *United States*, 356 U. S. 1 (1958)	10, 11
Standard Oil Co. v. *United States*, 337 U. S. 293 (1949)	12
Times Picayune Publishing Co. v. *United States*, 345 U. S. 594 (1953)	11
United States v. *Loew's, Inc.*, 371 U. S. 38 (1962)	10, 11
United States v. *First National Bank & Trust Co. of Lexington*, 376 U. S. 665 (1964)	9
United States v. *Jerrold Electronics Corp.*, 187 F. Supp. 545 (E. D. Pa. 1960), *aff'd.*, 365 U. S. 567 (1961)	9
White Motor Company v. *United States*, 372 U. S. 253 (1963)	12

PAGE

Statutes

Clayton Act, Section 3 (38 Stat. 703, 15 U. S. C. 12) 9

Sherman Act (26 Stat. 209, 15 U. S. C. 1) 9

Other

Modern Franchising, November-December 1964, p. 4 5

Hancock, *The Franchise System of Distribution*, November 1963 12

Harvard Business Review, January-February 1964, p. 60 13

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MOTION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE*.

INTERNATIONAL FRANCHISE ASSOCIATION, INC., hereby respectfully moves for leave to file a brief as *amicus curiae* in support of the decision of the Court of Appeals. Copies of this motion and the attached brief have been sent to the attorneys for the petitioners and the respondents.

International Franchise Association, Inc. has over 90 member firms, many of them small businesses, located throughout the United States. These firms are engaged in selling, and in assisting and licensing others to sell, many different types of goods and services to the public. Among the goods and services which are made available through franchisees of member firms are bicycles, rental automobiles, hamburgers, home-delivered dinners, ice cream, donuts, dry cleaning and home cleaning services, pancakes, root beer, temporary office personnel and employment agency services, paints, automobile supplies, and tools. Respondent Carvel Corporation is not a member of International Franchise Association, Inc. The membership also does not include the large oil companies which franchise service stations, or the large automobile and truck manufacturers which franchise dealers in their products.

The basic question at issue in this case is the legality of certain provisions of the Carvel franchise agreements.

The litigants represent only the divergent views of a few Carvel franchisees, the Carvel companies and certain of their suppliers. However, the decision will necessarily affect numerous other franchising arrangements. This is all the more so since the Brief for Petitioners asserts violation of *per se* antitrust rules. If the Court upholds such assertions, members of International Franchise Association, Inc., having franchising arrangements against which such rules are invoked may be precluded from asserting differences in circumstances because such differences may be held immaterial under *per se* rules.

Moreover, the consequences of an extension of *per se* rules to the setting of franchising arrangements could be ruinous to many members of International Franchise Association, Inc. and jeopardize the continuation of a method of business operation which has proven valuable and effective in establishing thousands of small businesses throughout the country.

For these reasons and for the additional reasons set forth in the accompanying brief and in the statement to Subcommittee No. 4 of the House Select Committee on Small Business annexed thereto, International Franchise Association, Inc. respectfully requests permission to file the accompanying brief as *amicus curiae*, setting forth its views with respect to the basic question at issue in this case.

Respectfully submitted,

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BRIEF OF INTERNATIONAL FRANCHISE ASSOCIATION, INC., AS *AMICUS CURIAE*.

Interest of International Franchise Association, Inc.

This case is concerned with the legality of provisions in franchise agreements between the Carvel respondents and independent dealers who manufacture and sell frozen dairy products, chiefly soft ice cream. Such manufacture and sale takes place in buildings which are specifically designed for the purpose and are decorated and identified by Carvel signs and insignia.

The dealers, referred to herein as franchisees, are obligated to buy certain supplies from Carvel or Carvel-approved sources. They are also obligated to conduct their businesses in accordance with certain rules prescribed in a manual furnished them.

In certain respects, the Carvel franchising arrangement is similar to franchising arrangements offered by many of the members of the International Franchise Association, Inc. Though the details of the arrangements differ widely,

the following general features are common to many arrangements:

(1) Assistance in Opening a Business.

Franchising prospers on the desire to have one's own business, and its extraordinary growth in the post-war years is due to the ability of franchisors, by virtue of their accumulated experience, to considerably reduce the franchisee's risk of failure in starting his business.

(2) Chain-Type Operation.

Chain-type operation is an important tool in reducing the risk of business failure. A ready-made reputation, built up by the franchisor and existing franchisees, may be transferred to a new franchisee. Because of identity or similarity of trade names and often buildings or other distinguishing features at all franchised locations, the new franchisee can look forward to the patronage of customers who have been favorably impressed with the quality of goods and services received at other franchised locations.

(3) Standardization of Quality.

The benefits derived from chain-type operation can be maintained only if all franchisees maintain quality standards. Lack of uniformity in quality would deprive the public of what it may reasonably expect from chain-type operation. It will also quickly tarnish the reputation of the franchised product or service to the detriment of all franchisees and the franchisor.

The members of International Franchise Association, Inc. have pledged to properly and effectively serve the needs of the ultimate user or consumer, to provide complete and realistic information to prospective franchisees, to draw up franchise agreements which are fair to the franchisee and which are fully understood by him prior to signature, to sell

to him only products which are of the represented quality and which are manufactured with ingredients or materials of approved standards, and in other respects follow the highest standards of business conduct. They believe that the franchising system as practiced by them is in the public interest, that no basis exists for extending *per se* antitrust rules to their franchising arrangements, and that any such extension would seriously threaten the continued existence of the franchising system.

ARGUMENT.

I.

Franchising Is in the Public Interest.

Experience has proven that the franchise method of operation satisfies a public demand. Particularly in the case of highway establishments, it satisfies the demand for establishments serving quality products and easily recognizable as such by travellers. In the case of other establishments, franchising enables independent merchants to offer the public products and services of standardized and high quality. Such a merchant obtains access to trade secrets, methods of operation and other information developed as a result of the experience of many similar merchants over a long period of time, permitting him to offer quality products and services. He thus acquires a running start in an important aspect of his business.

Equally important, for the small businessman with limited capital, franchising is an extremely effective means of avoiding business failure. A trade magazine recently reported that the rate of failures among new restaurants in New Jersey exceeded 50%, while the rate of failure among new franchisees was estimated at more nearly 2%. (Modern Franchising, November-December 1964, p. 4) The

franchisor will, of course, discourage the inadequately capitalized operator. The franchisor will frequently contribute his experience in making such vital business decisions as the street location of a business, the maximum rental that can safely be paid, the amount that can reasonably be expended for construction and decoration, the extent of necessary training of personnel, and the amount which should be expended in advertising. An unwise decision as to any of these matters could make the difference between success and failure.

Once established, the franchisee is encouraged to make use of up-to-date business methods; he is helped in controlling costs and quality; and he is assisted with advertising and promotion. He acquires in substance many of the benefits of large-scale operation, and is enabled to compete effectively.*

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* The following are examples of contributions which particular members of International Franchising Association state they make to the success of franchisees:

(1) Sun-X International began as a local glass tinting business in Houston, Texas in 1955 with capital of $7,000. Because of the impracticality of travelling great distances to tint windows, Sun-X began franchising others to enter the business in other areas. It offers its franchisees the necessary materials and specialized equipment, sales aids, advertising materials and a sales and technical training program. It also furnishes a technical manual and operations manual and makes available to franchisees prompt answers to questions not covered in the manuals. It was able to franchise others abroad as well as in the United States. Its success in doing so won it the Presidential E award for Export Achievement.

(2) Snap-on Tools Corporation manufactures hand tools and related automotive service equipment. Its home office is Kenosha, Wisconsin. Its services to its franchised dealers include operation of training schools, credit assistance, provision of an operating manual, specialized promotions, display recommendations, equipment and similar assistance.

(3) Duraclean Company of Deerfield, Illinois offers carpet and furniture cleaning franchises to franchisees operating in 50 states and approximately 25 foreign countries. New franchisees receive

In return for its contributions, the franchisor may be paid a franchise fee at the outset of its relationship with the franchisee. It may also permit all or part of its compensation to depend upon the success of the business and stipulate to accept a percentage of its receipts. It may also derive compensation from furnishing supplies, equipment, or services to the franchisee on a profitable basis.

The manifest advantages of franchising to the public, to the franchisee and to the franchisor are more fully stated in the appended statement of the International Franchise Association to Subcommittee No. 4 of the House of Representatives Select Committee on Small Business. These mutual advantages account for the commercial success franchising has achieved in recent years. As shown in the Appendix, franchising accounts for an annual dollar volume of over $10,000,000,000 even after excluding the large and somewhat unique categories of gasoline stations and automobile and truck dealerships.

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training in the home office training school and elsewhere, instruction manuals, chemical supplies, equipment, advertising materials and many sales aids, including sound color film strips and professional display units. Also available at all times are the technical, advertising, promotional and managerial advisory services of the franchisor.

(4) Mister Donut of America of Westwood, Massachusetts and its related companies franchise donut shops throughout the country and abroad. Among the services provided to franchisees are assistance in selecting a location, furnishing of building designs, selection of contractors, training, aid in equipment financing, special formulations and recipes, managerial and advertising assistance, and furnishing of supplies.

II.

Experience does not warrant the extension of *per se* antitrust rules to franchising.

It is reasonable for a franchisor to protect the reputation and good will which play such an important role in the franchising system by taking steps to assure that their value is not compromised by substandard operations. Indeed, as suggested in the Court of Appeals' opinion herein, such steps may be necessary to protect the very validity of the trademarks employed. Accordingly, there can be no doubt that it is reasonable to insist on standardization of operation, and to include in franchising arrangements restraints on the franchisee's operations for this purpose.

In considering such restraints, three important questions arise:

(1) Is such a restraint lawful if it goes beyond the minimum necessary for such purpose?

It is suggested by a judge of the Court of Appeals herein that the restraints imposed by Carvel in the name of quality went beyond what was "reasonable and necessary". However, it is respectfully submitted that what is reasonable should not be confined to what is necessary. F[redacted]eople would want to ride in an elevator designed to carry no more than their own weight. Conservatism demands a margin of safety. A margin of safety is equally necessary in protecting the reputation of a franchised product. Whether the margin of safety is reasonable in a particular case may depend upon many factors. Examples of such factors include:

(a) The nature and length of the experience of the franchisor in dealing with other franchisees. See, for

example, the treatment of restraints in the initial years of a business in *United States* v. *Jerrold Electronics Corp.*, 187 F. Supp. 545 (E. D. Pa. 1960), *aff'd*, 365 U. S. 567 (1961);

(b) The difficulty and expense of enforcing narrower restraints. The concurring opinion in the Court of Appeals herein suggests such difficulties; and

(c) The extent of any probable adverse effect on competition following from a broader restraint. The language of Section 3 of the Clayton Act speaks of a tendency "to substantially lessen competition" or to create monopoly. This Court has recently interpreted the Sherman Act to apply where "significant competition" is eliminated (*United States* v. *First National Bank & Trust Co. of Lexington*, 376 U. S. 665 (1964)).

(2) Is such a restraint lawful if it is also used to secure a source of income?

It is doubtful that serious antitrust issues would be posed by even the most exacting quality standards alone. If the franchisor does not require the franchisee to buy from him to meet such standards, restraints imposed on the franchisee to enforce the standards would seldom be questioned. Usually it is only when the franchisor elects simultaneously to standardize quality and derive a portion of his compensation from the sale of products to the franchisee, that questions arise as to whether the compulsory purchase is an unlawful exclusive dealing or tying arrangement.

It is respectfully submitted that a decision making compulsory purchases automatically unlawful would elevate form over substance and also impose unnecessary burdens on the parties. The source from which the franchisor

derives his compensation is partly a matter of form. If he is not permitted to sell exclusively, he may charge a higher fee or royalty. If the franchisor is obligated to take this part of his compensation as a franchise fee or royalty, however, the effect may be to raise the total cost of operation and make it less competitive with other forms of business. If, on the other hand, the franchisee may be obligated to buy only ingredients supplied by the franchisor, the franchisor's burden of inspection and quality checking is reduced and the amount he must charge the franchisee for such inspection is correspondingly reduced. At the same time, his profits from the sales permit a smaller fee or royalty. It follows that if a compulsory purchase provision in a franchise agreement is to be considered as an unlawful exclusive dealing or tying arrangement in all cases involving a certain level of sales, the effect may be to the long-range disadvantage of both franchisor and franchisee.

By contrast if, as is believed, the legality of such a provision depends upon its reasonableness in the circumstances, numerous factors may be taken into consideration. These would include, for example, whether the compulsory purchase requirement reasonably serves to promote lawful standardization, whether alternative methods of assuring such standardization and adequate compensation to the franchisor are feasible, and whether the stage of development of a franchised operation is such that these alternatives should be offered to the franchisees. Each case should be judged on its particular facts, and as these facts can be expected to vary considerably from case to case, the application of *per se* antitrust rules may retard rather than promote economic opportunity.

(3) May such a restraint be categorized as a "tying" agreement?

The rules relating to "tying" agreements, as set forth in *Northern Pacific Railway Co.* v. *United States*, 356 U. S. 1 (1958), and *United States* v. *Loew's, Inc.*, 371 U. S. 38

(1962), are peculiarly inappropriate to the type of franchise arrangement described above. Such an arrangement is not by its nature separable so that parts of it may be "tied" to other parts within the meaning of these cases. As noted above, the franchisor risks loss of its trademarks if it attempts to license them alone. It must insist on the maintenance of quality. Moreover, franchise arrangements of the type described may not be assumed to be designed for the purpose of artificially grouping wanted and unwanted commodities or services which can be and normally are sold separately. The franchisor offers specialized, interrelated services to the franchisee and much of their value is attributable to their specialized, interrelated character. The franchisor may be less qualified to render only part of the services. If a merchant desires only assistance in finding a suitable location, for example, he would normally consult a real estate broker rather than a franchisor. If he were interested only in advice with respect to record-keeping, he would normally consult an accountant. The franchisor is qualified to advise most usefully with respect to both these subjects only as they relate to operating a particular franchise. Even more clearly than in *Times Picayune Publishing Co.* v. *United States,* 345 U. S. 594 (1953), the rationale of the "tying" cases does not justify treating franchising arrangements as involving two or more different and separable commodities or services which are improperly grouped together.

In addition, as noted in the *Northern Pacific* case, *supra,* there is no restraint on competition even when separable services or commodities are grouped for sale, if competitors are ready to sell such services or commodities individually. There is no basis for believing that franchisors are without competition, either from other franchisors or from other forms of businesses.

Finally, it is submitted that franchising, having experienced its most dramatic growth in the United States in

recent years (Hancock, *The Franchise System of Distribution*, November 1963), deserves the benefits of more experience and fuller inquiry before any *per se* antitrust rules are formulated to govern its operations. The caution which this court observed in *White Motor Company* v. *United States*, 372 U. S. 235 (1963), in directing a fuller inquiry before ruling on contentions of *per se* illegality in the distribution of trucks, is even more appropriate before extending *per se* rules to the context of the franchising arrangements described herein.

III.

The consequences of any such extension could be ruinous.

If typical provisions of franchise agreements were held to be unlawful *per se*, the effect on the franchise industry would be disastrous. Existing franchisors might be faced with staggering liability, casting into doubt their ability to survive, much less to carry the benefits of franchising to additional prospective franchisees.

Furthermore, the consequences of even a solely prospective rule against compulsory purchases by franchisees, or other restraints which may be reasonable in particular cases, may be to hamper the ability of franchisors to sell and operate, and limit the ability of franchisees to compete effectively. Higher costs to franchisors mean higher costs for franchisees. This places them at a competitive disadvantage with integrated chain stores, often their most powerful competitors.

As a member of the Court stated in a dissenting opinion in *Standard Oil Co.* v. *United States*, 337 U. S. 293 (1949), the restraints displaced by particular rulings may be relatively innocuous as compared with the growth of integrated power which may be the only alternative. Department stores and chain stores already abound on the American

scene.* The tendency toward integration in manufacturing and selling has been noted frequently by this Court and by Congress. Franchising may well be the last frontier for the small businessman in the United States. There is neither need nor warrant for curbing franchisors in imposing restraints, so long as they are reasonable in the circumstances.

Conclusion.

It is respectfully urged that the laws which were in large part intended to protect small businessmen should not be construed so as to impede a sound and successful means of enabling them to meet the severe competition created by the rising tide of concentration in our economy.

Respectfully submitted,

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Dated: February 17, 1965.

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* Franchising has been described as "a lifesaver for the independent wholesale and retail merchant, in the face of increasing competition from corporate chains and discount operations." W. P. Hall, "Franchising—New Scope for an Old Technique," Harvard Business Review, January-February 1964, p. 60.

APPENDIX.

STATEMENT OF THE INTERNATIONAL FRANCHISE ASSOCIATION TO THE SUBCOMMITTEE NO. 4 HOUSE OF REPRESENTATIVES SELECT COMMITTEE ON SMALL BUSINESS

November 8, 1963

Mr. Chairman and members of the Subcommittee on Distribution, we are pleased to have this opportunity to present testimony to you on the franchise method of distribution on behalf of the International Franchise Association, Inc.

The International Franchise Association is a trade association representing the franchise industry. Our membership is composed of companies who utilize the franchise method of distribution for the marketing of both goods and services in a broad variety of industries throughout the American economic spectrum. The founding of the Association in 1960, was largely the result of the concern of a growing industry with the need for better franchising methods and the development of more information within the industry to promote and encourage standards and good business practices by franchising companies, and to help increase the general understanding of the franchise method of distribution. Our rapidly expanding Association presently has approximately 100 franchising and allied member companies.

My statement will not contain comments with respect to the two bills on which this Committee is developing testimony, HR-3559 and HR-3562, but rather will review for the benefit of the Committee, the development of the franchise method of distribution and its growing importance to the nation's economy. In the preparation of this statement we have drawn heavily upon a Small Business Administration sponsored research project conducted under the direction of Dr. R. S. Hancock, of the University of Minne-

sota, School of Business, entitled "The Franchise System of Distribution", which is now being published.

Franchising is one of the most rapidly growing methods of distribution in the United States today. Franchising is not new, but it has had unusual growth during the last decade. It is a widely used system for distribution of manufactured goods and of services. Its impact upon the growth of the United States and its important place in the nation's economy should be fully appreciated by your Committee as a background to its deliberations.

WHAT IS FRANCHISING?

Franchising is a system of distribution, or marketing, of goods and services, through an arrangement whereby a franchisor, who has developed a pattern or a format for a particular type of business, extends to franchisees who are independent small businessmen in the true sense of the word, the opportunity and right to conduct such a business. (Frequently the use of trademarks, patents, copyrights, advertising materials, and other legally protected products, methods, goods or names are included in the franchise package.)

Successful franchising is based on

(1) a contractual relationship clearly spelling out the responsibility and obligations of both parties, and

(2) a strong and continuing cooperative relationship between franchisor and franchisee.

Frequently, the physical layout and appearances are similar in all establishments within a particular franchise group, such as distinctive buildings, signs, colors, packages, uniforms, bottles, trucks and business methods. In addition to standardization of physical appearances, most often merchandise or services sold, operating procedures and methods are also standardized to a high degree thus affording the public the advantage of being able to rely on a familiar name for quality and uniformity of product and service.

The franchisee remains an independent businessman, but the securing of franchise rights places specific responsibilities on him, such as a minimum investment for the franchise which may include standard inventory or equipment package, the utilization of standardized and proven promotional efforts and programs, product quality, use of names and trademarks, established management procedures and, in some instances, the payment of royalties or franchise fees. The franchise system sets up an inter-relationship between the franchisor and the franchisee in which a proven package is sold to the franchisee. This package usually includes goods or services, training, promotional techniques, standard management techniques, continued management aid and assistance, together with the right to distribute or sell products and/or services for which the franchisor will receive such considerations as a franchise fee and/or royalty on sales or a profit from the sale of equipment or products to the franchisee, although in some instances joint advertising funds are the only advantage sought by the franchisor. It is a system in which both parties recognize that their mutual success and welfare are interdependent and closely related.

INDUSTRIES USING THE FRANCHISE METHOD OF DISTRIBUTION

While franchising is certainly not limited to the industries which are listed below, the major or an important share of these industry groups distribute the goods or services produced through franchised outlets and they are thus among the most familiar to the American public. These industry groups are:

Auto, Truck and Trailer Rentals
Automobile and Truck Dealers
Candy and Confectioneries
Carpet and Upholstery Cleaning Services
Coin-Operated and Regular Laundries & Dry Cleaning Services
Drug Stores
Gasoline and Oil Service Stations

Grocery Stores
Hardware Stores
Hearing Aids
Moving Companies
Roadside Food, Beverage and Soft Ice Cream Dispensing Restaurants
Soft Drink Bottlers
Swimming Pools
Temporary Help Services
Tires and Auto Accessories
Tool and Equipment Rentals
Variety Stores
Water Conditioning Systems and Services

WHY HAS FRANCHISING GROWN?

There are many important reasons why franchising has become a widely used method of distribution.

(1) Franchising permits greater economic expansion within given limits of capital, time and personnel over other systems of distribution, particularly as compared with manufacturer or supplier-owned outlets. Capital requirements, personnel requirements, real estate and other requirements to build a distribution system of wholly owned retail outlets is beyond the reach of many market suppliers. Franchising provides the supplier with the opportunity to distribute his product or service with substantially reduced capital and personnel responsibilities, still retaining a certain degree of control through supervision and guidance. Through a franchise arrangement, the supplier secures the "assistance" of the franchisee by the franchisee's purchase of equipment or other requirements, inventory, handling personnel problems, and operation of the business outlet.

(2) Competition from large regional or national corporate chains in hardware, food, drug and variety chains during the 1920's stimulated defensive measures by wholesalers in these lines who formed voluntary

chains based on franchise agreements between the dealer and the wholesaler to permit active and effective competition with chains and to preserve the integrity and the ability of the small businessman to compete. The growth of franchised food, drug, automotive parts, hardware and variety stores during the 1920's and the following years was prompted by the growth of large corporate chains, and the establishing of a system of independent businessmen affiliated with a wholesaler through a franchise contract provided the same standardized lines, professional management and promotional systems, merchandising programs and other assistance necessary to effectively compete with the chains.

(3) Unusual product requirements and specialized knowledge require that some products or services be marketed singly without being mixed with a variety of other commodity classes. If a product requires unusual services or has a distinct characteristic, it sometimes cannot be mixed with other items and still be successfully marketed. Examples of such products are laundry and dry cleaning systems, gasoline service stations, prepared food, beverages, swimming pools, soft ice cream and rug and upholstery cleaning. With such products, franchising permits the focusing of marketing attention on the product itself, undiluted by competing products.

(4) Franchising offers an opportunity for people to "be their own boss" or "have my own business" under circumstances which are more favorable for success and growth with a proven franchise which offers demonstrated public acceptance and business know-how which would otherwise have to be acquired or purchased with considerable risk to the small businessman. This allows the franchisee to use already tested business methods and thus minimize his capital costs. This nation has been built on the desire for independence, individual accomplishment, and becoming one's own boss. The rate of new business formation in this country is eloquent testimony to this desire. Franchising offers

a convenient and economic means for the filling of such a drive or desire with a minimum of risk and investment and maximum opportunities for success through the utilization of a proven product or service and marketing method.

THE SIZE OF THE FRANCHISE INDUSTRY

For statistical purposes, the United States Government does not presently distinguish beween businesses which utilize the franchise method of distribution and those who do not. However, estimates of the industry are presented here, based on U. S. Government statistics and actual or estimated industry figures, for those industries which make up component parts of the franchise industry. The approximate total size of the industry, at retail sales value is in excess of 59 billion dollars.

Table I below lists the various industries involved, the approximate number of franchisees and the estimated dollar volume.

TABLE I

Industries utilizing the franchise method of distribution, in whole or in part, with estimated number of franchised outlets, and approximate retail dollar volume.

	Industry	Franchised Outlets	Annual Dollar Volume
1.	Automobile & Truck Dealers	33,000	$35,000,000,000
2.	Carpet & Upholstery Cleaning Services	4,000	100,000,000
3.	Coin-Operated & Regular Laundry and Dry Cleaning Services	35,700	509,000,000
4.	Gasoline & Oil Service Stations	206,302	14,178,000,000
5.	Grocery Stores	16,000	4,450,000,000
6.	Hearing Aids	3,500	70,000,000
7.	Moving Companies	5,000	1,000,000,000
8.	Roadside Food, Beverage & Soft Ice Cream Dispensing Restaurants	24,590	1,409,611,000
9.	Soft Drink Bottlers	4,000	2,001,000,000
10.	Swimming Pools	1,000	40,000,000
11.	Temporary Help Services	500	100,000,000
12.	Variety Stores	2,400	150,000,000
13.	Water Conditioning Systems & Services	2,300	207,000,000
	TOTAL	338,652	$59,214,627,000

TABLE IA

Industries utilizing the franchise method of distribution in whole or in part, on which reliable figures or estimates are not now available.

Auto, Truck and Trailer Rental
Candy and Confectioneries
Drug Stores
Hardware Stores
Tire and Auto Accessories
Tool and Equipment Rental

Franchising represents an outstanding example, perhaps unique, wherein the interest of the small businessman and the large manufacturer or service industry can be a joint interest.

FRANCHISING IN THE U. S. ECONOMY

From the point of sales volume alone, the franchise method of distribution is an extremely important part of the economy of the United States. As we have noted, major industries in the United States utilize either in total or in large part, this method of distribution as the most satisfactory means of marketing products or services. The number of people employed in distribution through franchising, both on the level of the manufacturer or franchisor and on the level of retailer or franchisee, comprises an important and influential part of the American economy.

Of even greater significance, however, is the important function performed by franchising in providing vast business opportunities in our free enterprise economy. In such an economy, a dynamic and flexible distribution system is vitally important. Franchising fulfills this important requirement particularly in the area of selective distribution by facilitating the entry of both franchisor and franchisee into a franchising system on a larger scale per dollar, with less capital investment and a minimum of risk. Both the franchisor and the franchisee have their mutual success closely linked. Both are independent entrepreneurs, highly motivated toward success and both have unusual growth opportunities for individual achievement. Franchising thus

encourages expansion of free enterprise on both the level of the franchisor, who by conceiving, evolving and proving a sound marketing program, can expect to expand successfully and at a more rapid rate through franchising. The franchisee, with a minimum of investment, can buy a franchise covering a widely promoted and accepted product and receive the benefits of a sophisticated and well developed business and management system which gives a substantial guarantee for a successful business venture to the man who has sufficient motivation and drive to effect the program. The franchise story is replete with examples of successful franchise programs and the United States has substantially more independent businessmen today than would have been possible without this unique distributive system. In fact, every member of the International Franchise Association represents a story of successful free enterprise in action and in turn can point to a substantial number of success stories among their franchisees. Table II below lists some of the advantages offered to the franchisee by the franchisor and vice-versa.

TABLE II

ADVANTAGES TO FRANCHISEE

1. Nationally known name and trademark.
2. Consumer publically recognized system and reputation.
3. National publicity and promotion.
4. Nationally recognized product or service.
5. Standard product and quality.
6. Standard management system and methods.
7. Standard accounting method and inventory control.
8. Aid in financing business.
9. Bulk purchasing advantages and merchandise buying techniques and sources.
10. Proven system of operations, business manuals, sales kits, etc.
11. Scientific site selection for locations and assistance with leasing arrangements.
12. Psychological testing for screening franchisees.
13. Benefit of counsel of business experts' experience not otherwise available.
14. Training programs for franchisees and key employees.
15. Design of facilities and advice on fixtures, displays, signs, etc.
16. Planning and advice on local promotion of business including opening of shop and proven sales techniques.
17. Guidance in selection of inventory.

ADVANTAGES TO FRANCHISOR

1. Investment capital to expand production, promotional and merchandise facilities.
2. Local, interested management, with cost and sales awareness.
3. Acceptance in the community as a local business.
4. Limited payroll and insurance costs.
5. Better market communications—local franchisee to manufacturer or supplier.
6. Individual ownership, giving strong motivation to success.
7. Thorough fast and selective distribution.
8. Reduced operating expenses.

Six areas have been identified as areas of distinct contribution made by franchising to the U. S. economy and to American business. These are as follows: (1) *The large number of franchise businesses currently in operation in the United States are extremely important to our nation's economy,* and many industries have developed to their present level by successfully utilizing the franchising method of distribution demonstrating its key role in their success. There are at least 338,000 franchises in the United States who represent an approximate volume of business of over $59 billion dollars. (2) *Higher standards of retail and service operations have been achieved through franchising.* The franchisee has higher standards of operation because the franchisor has established requirements for (a) standardized quality of goods and services, (b) meeting nationally accepted and advertised standards of business procedures, and (c) attractive, convenient, well located and easily identified establishments. These factors contribute to the rapid growth and to the stability of a franchising system. (3) *Efficiency of business management has been improved through franchising.* Franchising systems are based on proven and effective management techniques which have been standardized as much as possible to assure their efficient and effective operation. Franchising companies on a continuing basis require the re-evaluation of methods of recruiting, training and managing. (4) *A broader range of goods and services are available to the consuming public*

through franchising. The franchising concept, as we have noted, encourages the creation of new business enterprises, both on the franchisor and the franchisee level. Its history is replete with the development of industries from ideas. (5) *Economic stability of retail outlets has been increased through franchising.* Committee members are familiar, I'm sure with the high mortality rate in small business, and the fact that the majority of all retail failures are attributable to inexperience, incompetence and other factors which relate to management competence. Because of the key role played by the franchisor, a franchising company must exercise extreme caution in selecting properly qualified franchisees, and it must provide tested operating methods and management procedures as well as a continuing program of training and development. This fact of economic life dramatizes the close working relationship of franchisor and franchisee in achieving their common goal of business success. This relationship created by the franchise environment helps to reduce business failures and promote business stability on a wide basis in the United States. (6) *Franchising makes an important contribution to the economy of this country by broadening the economic base through the encouragement of small businesses.* Franchising, based on multiple ownership of its many parts, encourages many individual entrepreneurs to enter the distribution field and to compete successfully with other means of distribution on an effective, efficient, free enterprise basis. Franchising has thus encouraged the growth of small business on a sound and efficient basis. Franchising looks forward to continued growth, continued expansion, and a continued contribution to the growing strength of our economy.

In closing, we refer the Committee to an observation by Judge Dawson of the U. S. District Court in the *Bernard Susser* vs. *Carvel Corporation, et al.,* case in which he succinctly stated the fundamental of franchising: "The franchise method of operation has the advantage, from the standpoint of our American system of competitive economy, of enabling numerous groups of individuals with small cap-

ital to become entrepreneurs. The franchise business has had a phenomenal growth in the ice cream history. If our economy had not developed that system of operation these individuals would have turned out to have been merely employees. The franchise system creates a class of independent businessmen: it provides the public with an opportunity to get a uniform product at numerous points of sale from small independent contractors, rather than employees of a vast chain. The franchise system of operation is therefore good for the economy."